



ROUTING AND RECORD SHEET

SUBJECT: (Optional) Draft Intelligence Community Legislative Program for
Second Session of the 100th Congress:
Comments and Proposals

FROM: Hugh E. Price
Director of Personnel

EXTENSION

NO.

OCA 87-3747

DATE

27 AUG 1987

TO: (Officer designation, room number, and building)

DATE

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COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

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MEMORANDUM FOR: Deputy Director for Legislation
Office of Congressional Affairs

FROM: Hugh E. Price
Director of Personnel

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REFERENCE: OCA 87-3113, dated 24 July 1987

1. We have received the draft legislative program and have no objection to the various items. Many of the items provide authority to DIA, DoD and NSA in areas where the Agency already has statutory authority. All these authorities will greatly enhance the ability of the other Intelligence Community agencies to accomplish their national security missions.

2. We strongly support and stress the importance of the proposed drug and alcohol abuse legislation (100/2-6). Without this legislation, CIA, NSA, and DIA may be impaired in their ability to deal with the security implications of alcohol and drug abuse. With recent court decisions treating alcoholism and alcohol abuse as a handicap protected from discrimination, the likelihood that a similar emphasis will be placed on drug abuse increases. We thus are concerned that the Agency, as well as NSA and DIA, will be required to accommodate these "handicapped" personnel regardless of the security consequences of retaining or clearing such personnel.

3. Likewise, we endorse the proposal to clearly establish that the authority of Executive Branch officials to make security clearance and access determinations is committed to their discretion by law and, as such, is not subject to administrative or judicial review. The necessity for such legislative clarification of Executive Branch authorities arises from a recent court decision, under appeal to the Supreme Court, which ordered the Merit Systems Protection Board to review the merits underlying the Navy's revocation of a security clearance. Such a decision, if allowed to stand, would have an adverse effect on the ability of government agencies to protect the national security.

4. Pursuant to your request for our suggestions for new proposals, we submit the following items for inclusion in the legislative program with the understanding that item c is currently under study as an option and the decision whether or not to go forward with the proposal will be made in mid-September. Also, please be advised that items b, d, and e are features of the proposed personnel management and compensation system and thus must be accepted and approved within the Agency prior to definitive submission to the Congress for approval.

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a. If the Immigration and Naturalization Service (INS) does not agree with our position that the CIA is exempt from the recordkeeping requirements of the Immigration reform and Control Act of 1986, the Director of Central Intelligence may propose legislation that would authorize the Attorney General to exempt government agencies from the recordkeeping requirements associated with the preparation and retention of INS Forms I-9 if the administrative procedures of the employing agency meet the underlying requirement of the Act. This requirement would impose an unnecessary administrative burden on the Agency and is superfluous to the Agency's background investigations and internal procedures.

b. In order to more effectively manage our personnel resources, the Director of Central Intelligence may propose legislation similar to the Department of Defense's appropriations legislation for fiscal year 1987, which waived Congressional authorization of civilian personnel end strength levels.

c. In order to enhance the protection of employee identities and to provide benefits more responsive to the unique conditions of Agency employment, the Director of Central Intelligence may propose legislation which would authorize the Central Intelligence Agency to withdraw from the Federal Employees Health Benefits Program and to administer a separate insurance program tailored to its employees and retirees.

d. In order to enhance the Senior Intelligence Service, the Director of Central Intelligence may propose to allow SIS employees to convert to cash any annual leave balances in excess of a set amount each year. This proposal benefits the government since these leave balances will be paid at current salary rates rather than the salary rates at the time of retirement.

e. In order to provide the Agency with greater flexibility in rewarding performance by means of bonuses rather than permanent increases, the Director of Central Intelligence may propose legislation to include bonuses in the definition of basic pay used in the computation of the "high-three" average pay for retirement purposes. Appropriate safeguards would be included to prevent abuses of the retirement system resulting from giving these bonuses for only a few years and thereby artificially raising the "high-three" average pay.

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f. In order to provide a survivor annuity to any qualified former spouse under CIARDS regardless of the date of the employee's death, the Director of Central Intelligence may propose legislation which would provide death-in-service benefits to individuals who were qualified former spouses on 15 November 1982. This legislation would extend to pre-1982 qualified former spouses the same death-in-service benefits proposed in item #100/2-4.

g. To bring CIARDS into conformity with rules governing CSRS disability annuitants, the Director of Central Intelligence may propose legislation which would authorize a CIARDS disability annuitant, whose annuity was terminated (due to a determination that he or she was no longer disabled) and whose annuity is later restored, to elect life and health insurance coverage subsequent to the restoration of the disability annuity.

h. To bring CIARDS into conformity with CSRS provisions and allow, in response to a court order or voluntary election on the part of the participant, a former spouse who is not a qualified former spouse (as defined under CIARDS law) to be eligible for survivor benefits, the Director of Central Intelligence may propose legislation which would authorize a new category of former spouse (referred to as "previous spouse") which would be defined as a divorced spouse who had been married for at least nine months. A previous spouse would have no automatic entitlement to survivor benefits, but court orders and/or elections granting survivor benefits could be honored under CIARDS.

5. If you have any questions or if we may be of assistance in drafting the legislative amendments, please contact

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DDA/OP/PA&E (14 August 1987)

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